STATE OF MAINE

THE SUPREME JUDICIAL COURT

Sitting as the Law Court

DOCKET NO. Fed-22-73

STEVEN KNEIZYS,
PLAINTIFF/APPELLANT

vs

FEDERAL DEPOSIT INSURANCE CORPORATION,
As Receiver for Washington Mutual Bank, Henderson, Nevada
DEFENDANT/APPELLEE [1]

And Parties In Interest / Former Parties also docketed:
JAMES BOHANON and VICKI MCLAUGHLIN;[2]
APPELLEES

ON CERTIFIED QUESTION FROM THE WESTERN DISTRICT OF WASHINGTON AT SEATLE, Dkt No: C20-1402RSL (PACER 2:20-cv-01402-RSL)

APPELLANT'S REPLY BRIEF

Dated: August 2, 2022

Respectfully Submitted by:
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NOTE: Case transferred from the District of Nevada, Docket # 2:19-cv-01499

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INTRODUCTION TO APPELANT'S REPLY BRIEF

The Federal Deposit Insurance Corporation, “in the shoes of” Washington Mutual Bank of Henderson, Nevada, as Receiver[1], is now joined by the United States Attorney for Maine in this endeavor, representing the Federal Government's interests. Together they are the “Federal Government” or simply “The Feds”. The FDIC as Receiver is “The Bank” at this point, but Appellant will refer to Washington Mutual Bank pre-receivership as “WAMU”. A a reminder, the certified questions presented by the Western District of Washington asks:[2]

> The undersigned therefore certifies the questions of whether, under Maine law, any warranty is implied by the use of the term "Warranty Deed" to describe an instrument which "grants . . . real property with the buildings and improvements thereon . . . being the same premises conveyed to GRANTOR" by prior deed (Dkt. # 91-1 at 105) and, if so, which warranty or warranties are implied. The undersigned respectfully requests the Law Court to provide instructions concerning such questions of state law pursuant to 4 M.R.S. § 57 and Rule 25 of the Maine Rules of Appellate Procedure.

(Note: The government is attempting to get the Maine Supreme Judicial Court to say Exhibit G is not a Warranty Deed and to decline to say what warranties are included is the deed, which of course is not quite what was asked of the Court.)

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1 See *Sharpe v. FDIC*, 126 F. 3d 1147, 1152 (9th Cir. 1997):
> At the outset, we note that as receiver the FDIC "steps into the shoes" of the failed financial institution, assuming all the rights and obligations of the defunct bank. *** We will therefore consider the actions of [the defunct bank] to be those of the FDIC.

2 See the paragraph in ECF 106 p 8, Appendix p. 22, and the paragraphs preceding it for a more complete rationale for the question.

REPLY ARGUMENT

Plaintiff's Reply argument is also extremely simple – the Federal Government is now in a criminal conspiracy to commit Bank Fraud, if we believe their construction of the deed.[3] They are attempting to profit from the deed entitled "WARRANTY DEED" by now claiming there are no warranties in the Bank's "WARRANTY DEED" but they are keeping the money, not delivering the land and claiming there is no recourse (and they claim that is not a forfeiture!!!!). They do not contest that under their construction of the deed Federal Statutes are being violated, and that there is bad faith on their part, they are merely claiming this is perfectly fine under Maine Law to issue a deed entitled "WARRANTY DEED" and claim it is meaningless in terms of warranty as the heading itself is meaningless as to the intentions of the parties as per *statutory* construction.

The Federal Government has tried the argument that the headings of a contract in Maine should be ignored, and lost that argument in Federal Court where they literally and figuratively had home-court advantage. In *Federal Trade Commission v. Health Research Laboratories, LLC*, Dist. Court, D. Maine 2020,

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3 See *US v. Bank of New York Mellon*, 941 F. Supp. 2d 438 - Dist. Court, SD New York 2013, holding:

> BNYM contends that it cannot be held liable on such a theory, arguing that the affected institution must be the victim of or an innocent bystander to the alleged fraud, not the perpetrator. The Court disagrees. In passing FIRREA, Congress sought to deter fraudulent conduct that might put federally insured deposits at risk. Where, as alleged here, a federally insured financial institution has engaged in fraudulent activity and harmed itself in the process, it is entirely consistent with the text and purposes of the statute to hold the institution liable for its conduct.

The FDIC as Receiver is in the shoes of WAMU, either attempting to profit from or actually committing, the fraudulent activity, and has obviously harmed itself by having to defend itself in court as the insolvent banks asset's and the FDIC's insurance funds are at risk in the litigation.

No. 2:17-cv-00467-JDL, July 31, 2020 ORDER, n4, the court said:

> The Plaintiffs contend that section headings are relevant only when resolving ambiguity, not when determining whether a contract term is ambiguous. However, the Plaintiffs rely on authorities discussing statutory interpretation, not contract interpretation. Although there is some overlap between principles of statutory interpretation and principles of contract interpretation, I am persuaded by the Defendants' argument that the section headings are part of the whole document that I must consider. See Williston & Lord, Williston on Contracts § 32:5; 5 Margaret N. Kniffin, Corbin on Contracts § 24.21(A)(15) (1993 ed.).

The Federal Government has given no Maine-State law since recently losing this argument in Federal District Court that would lead us to believe Maine State Law has (or should be) changed.[4] The Federal Government seeks to substitute their distorted version of Maine legislative intent for the Bank's actual intentions – the two are not the same! If WAMU was committing Bank Fraud the Federal Government would have said so. So if the fraud happened after the WAMU Receivership began who gets charged?[5] Wouldn't it be a taking for the Federal Government to knowingly and purposefully profit from fraud? By not addressing the Fraud and instead focusing on legislative intent the Federal Government has

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4 In general, the Feds would fare no better in Federal District court. The First Circuit quotes Maine State Law, as per *Twombly v. AIG Life Ins. Co.,* 199 F. 3d 20 (1st Cir. 1999) noting contracts are "to be construed in accordance with the intentions of the parties ..." and "In seeking to ascertain the intention of the parties, the court must examine the whole instrument." (citations omitted). And also cites the Maine Supreme Judicial Court in *Crowe v. Bolduc*, 365 F. 3d 86, 97 (1st Cir. 2004):

> A contract ordinarily should be interpreted so as to give force to all of its provisions. *Blackie [v. State of Me.]*, 75 F.3d [716 (1st Cir. 1996)] at 722; *Acadia Ins. Co. v. Buck Constr. Co.*, 756 A.2d 515, 517 (Me.2000). It follows that an inquiring court should, whenever possible, avoid an interpretation that renders a particular word, clause, or phrase meaningless or relegates it to the category of mere surplusage. *Acadia Ins.*, 756 A.2d at 517.

5 As per 18 U.S. Code § 1344 - Bank fraud, "... shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both." As the United States Attorney's Office, co-author of the FDIC's filing here attempting to profit from Bank Fraud, also happens to be who would charge the fraud, obviously nobody would pay the price. But immunity/conflict of interest should not equate to acting with impunity.

left it up to the Maine Supreme Judicial Court to decide as a matter of Public Policy how to protect owners of property in Maine -- the Feds are simply inconsistent, self-dealing, and overall unreliable.

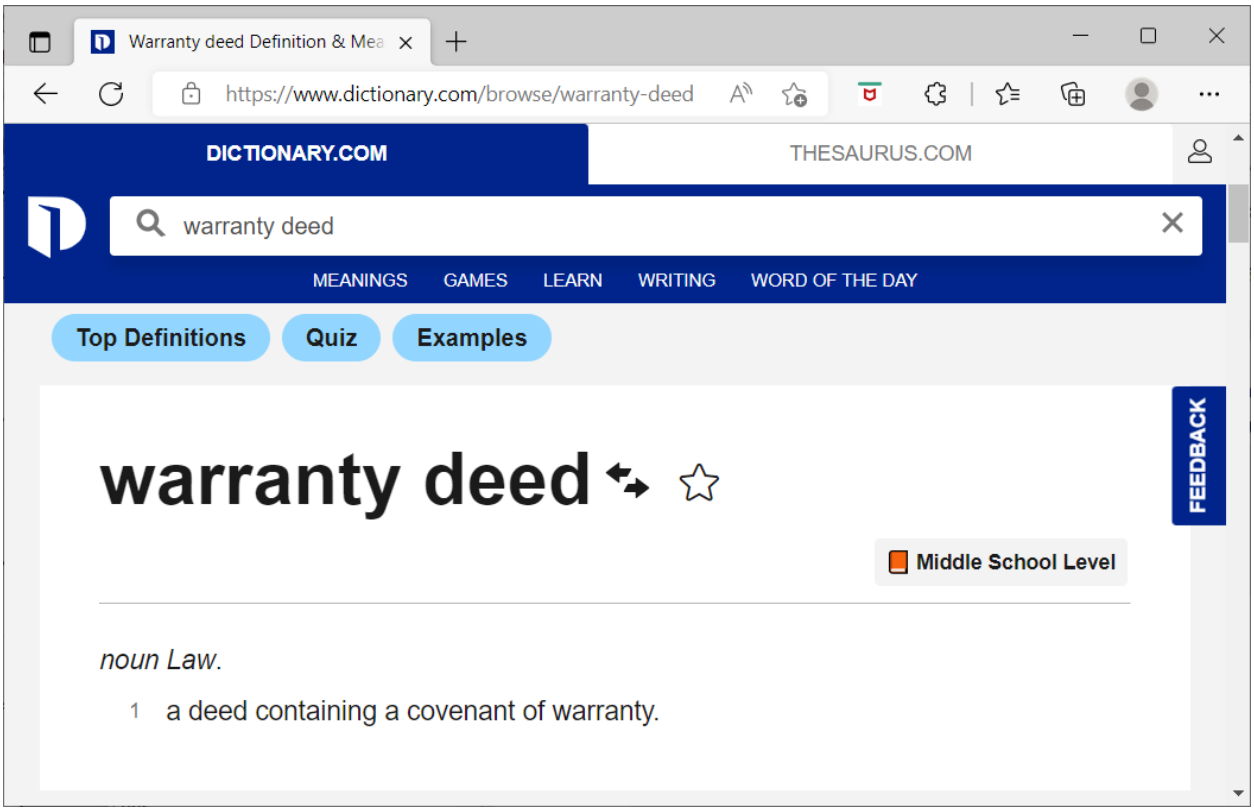
The Feds cite an old Texas case, *Neece v. AAA Realty Co.*, 322 SW 2d 597 - Tex: Supreme Court 1959, that says you cannot turn a quitclaim deed into a warranty deed by putting the two words "Warranty Deed" as a heading for the deed. Obviously, if you put the phrase"Warranty Covenants" in the heading of an otherwise quitclaim deed in Maine then because of the Short Forms Deeds Act it becomes a Warranty Deed! So what is a Warranty Deed? – it is a deed that contains Warranty Covenants. The Feds want the court to render the heading meaningless while admitting the State of Maine gathers intent from all portions of the instrument. The Feds position is hopelessly contradictory – as per *Acadia Ins. Co. v. Buck Const. Co.*, 756 A. 2d 515, 517 (Me. 2000):

> [W]e will "avoid an interpretation that renders meaningless any particular provision in the contract," *SC Testing Tech., Inc. v. Department of Envtl. Protection*, 688 A.2d 421, 424 (Me.1996).

How can we give meaning to the heading "WARRANY DEED" if we ignore it?

As per the Feds, the phrase "WARRANTY DEED" is NOT defined in the Short Form Deeds Act but "Warranty Covenants" is and therefore the phrase "Warranty Deed" is meaningless. However, as noted in *Maine Drilling v. Ins. Co. of N. America*, 665 A. 2d 671, 675 (Me. 1995), "'[t]he court must interpret unambiguous language in a contract according to its plain and commonly accepted

meaning.' *Brackett v. Middlesex Ins. Co.*, 486 A.2d at 1190". If one goes to "dictionary.com" and types in Warranty Deed they would see this result:[6]



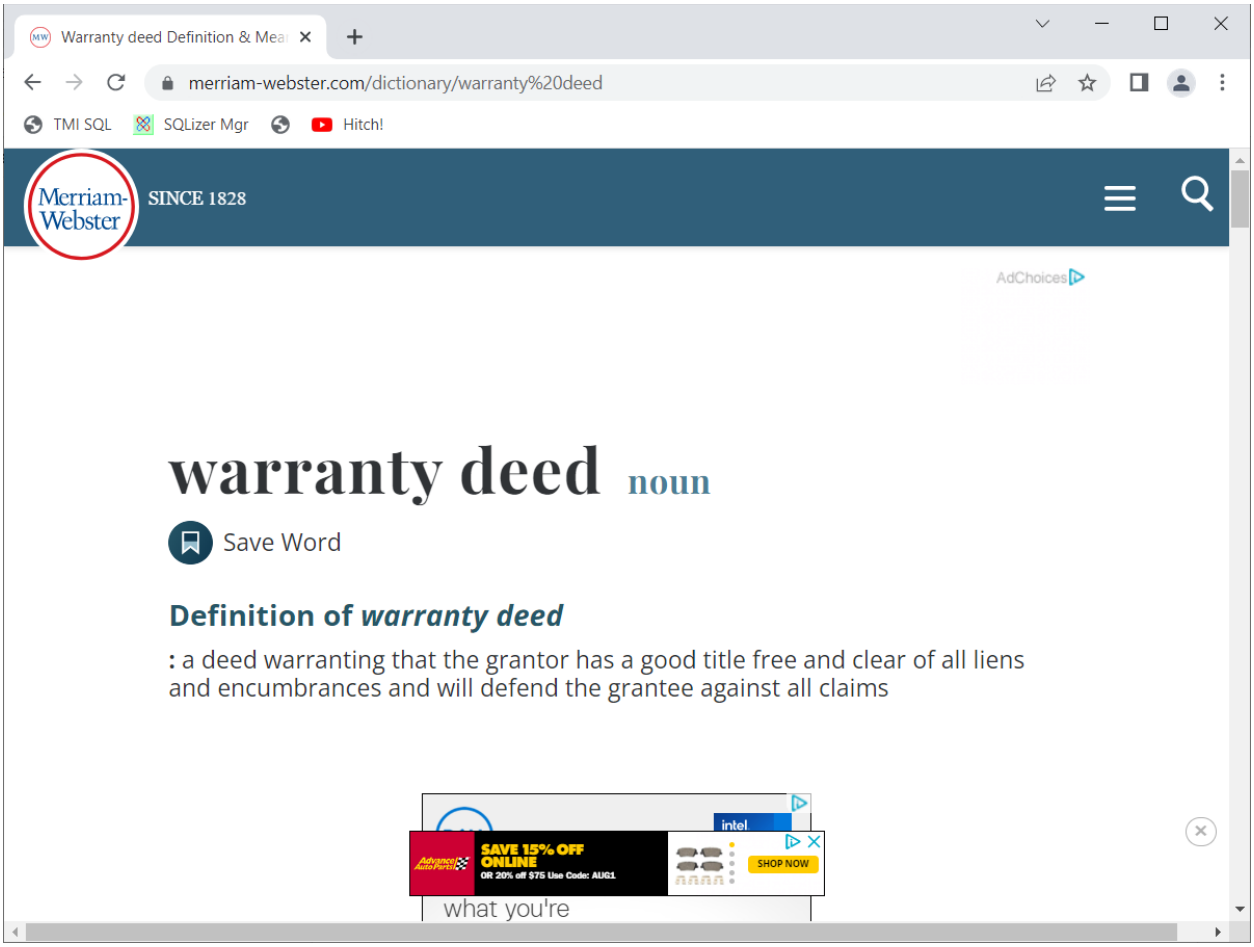
Is that not a valid plain and ordinary meaning, "a deed containing a covenant of warranty"? The supposedly missing word "covenant" accompanying the word warranty is right there in the heading's plain meaning. It is the "Middle School"-level meaning so perhaps that is too simplistic. Perhaps the Statutory definition of Warranty Deed at 33 M.R.S §763 is exactly what should be used[7].

The fact is, Merriam-Webster Dictionary probably a a more well-known

6 URL: https://www.dictionary.com/browse/warranty-deed
Captured 8/1/2022 at 12:33am Eastern time. Sometimes ads popped in and out of the page but did not change the web results themselves.

7 As per *McCormick v. Crane*, 2012 ME 20, ¶ 6, 37 A.3d 295 (2012), "The covenant of seisin, the covenant of the right to convey, the covenant of warranty, the covenant of quiet enjoyment, and the warranty of freedom from encumbrances accompany every warranty deed executed in conformity with this statute."

dictionary, the result there for the search "Warranty Deed" was:[8]



It looks like the plain meaning of the phrase "Warranty Deed" certainly is not meaningless, at least not as to what a "Warranty Deed" actually is expected to be.

The Texas case cited by the Feds, *Neece v. AAA Realty Co.*, 322 SW 2d 597, 600 - Tex: Supreme Court 1959, a state where they have no statutory short forms deeds, did say it would "be unusual to metamorphose a quit claim into a warranty deed simply by labeling it as such." In 1959 that was also true in Maine, before the Short Forms Deeds Act. But as per University of Maine Professor Knud E.

8 Captured 08/01/2022 @ 5:30pm from URL: https://www.merriam-webster.com/dictionary/warranty%20deed

Hermansen (P.L.S., P.E., Ph.D., Esq.)'s often reprinted article "Deeds: A Primer For Surveyors" (published online at the University of Maine 2015)[9]:

> The title found at the top of the deed is not determinative if the deed is a warranty deed unless the state has a *Short Forms Deed Act* that allows for abbreviated wording in the deed to determine the covenants present in the deed.

Clearly the Short Forms Deed Act does allow for abbreviated wording. We must not toss aside a critical term in the already abbreviated wording under the guise of "legislative intent" so that the Feds can change the true intentions of the parties.

Finally, the rest of the Federal Government's arguments are fascinating – fascinating to see how far they will go with obfuscation and sophistry – to avoid their fiduciary duty to protect the citizens from fraudsters in general but unscrupulous banking practices in particular. For each argument they make, Plaintiff respectfully asks the court to think of the question "How is the argument being made by the Federal Government, if adopted, going to protect the public and promote the general welfare?" When one realizes the Federal Government's whole argument is based on self-dealing, trying to get out of an obligation similar to ones they fine and prosecute others for not fulfilling, we realize they have lost their way. As a matter of public policy their construction of the deed, and fallacious arguments about forfeiture, good faith and fair dealing, should not be adopted.

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9 Versions of this article are available online at:
https://umaine.edu/svt/wp-content/uploads/sites/105/2015/05/DeedsTypes.pdf
https://www.plso.org/Resources/Documents/PLSO_JulyAugSep2013_web.pdf
http://mississippisurveyor.com/wp-content/uploads/2016/09/August2016.pdf
https://cdn.ymaws.com/www.vasurveyors.org/resource/resmgr/newsletters/july_2013.pdf

CONCLUSION

The answer to the certified questions must be that the deed in question, Exhibit G, the conveyance from Washington Mutual Bank to Joyce Earle, is a full Warranty Deed as defined in 33 M.R.S. §763 et. seq. It is the only interpretation that it consistent with the rules of interpretation/ambiguity/construction, concepts of good faith and fair-dealing, and the principle that ambiguities and inconsistencies must be found in favor of the grantee. To find otherwise is not only an open invitation to remorseful sellers and fraudsters alike, but in this case the deed would be product of the criminal act of Bank Fraud, thus the contract would be void or at least voidable. This also Court has the unique ability to help save the Federal Government from itself! By simply interpreting it at face value, that WAMU issued a Full Warranty Deed and a Full Warranty Deed was accepted, it was a lawful contract with lawful intentions and the need for the Federal Question to be presented at all was just the result of the Feds ***attempting*** to commit Bank Fraud post-Receivership[10]. Truly, there isn't any evidence that WAMU was attempting to defraud anybody, unless we ***choose to refuse to believe*** that the deed they emblazoned with the title "WARRANTY DEED" was intended as just that!

(Signature on Cover)

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10 See *Loughrin v. United States*, 134 S.Ct. 2384 (2014):

> A provision of the federal bank fraud statute, 18 U.S.C. § 1344(2), makes criminal a knowing scheme to obtain property owned by, or in the custody of, a bank "by means of false or fraudulent pretenses, representations, or promises." The question presented is whether the Government must prove that a defendant charged with violating that provision intended to defraud a bank. We hold that the Government need not make that showing.

CERTIFICATE OF SERVICE

I, Steven Kneizys, Appellant/Plaintiff, hereby certify 2 copies of the Appellant's Reply Brief is being sent by First Class mail (or faster) to the following addresses:

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Dated this 2nd day of August, 2022.

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